
SUBSTITUTE HOUSE JOINT MEMORIAL 4005

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Hargrove, Cairnes, Pelesky, Goldsmith, Buck, Johnson, Clements, Carrell, McMahan, Campbell, Koster, Padden, Huff, Backlund, Reams, Pennington, Stevens, Fuhrman, Silver, Crouse, Casada, Thompson and Sherstad)

Read first time 03/01/95.

1 TO THE HONORABLE BILL CLINTON, PRESIDENT OF THE UNITED STATES, AND
2 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE
4 UNITED STATES, IN CONGRESS ASSEMBLED:

5 We, your Memorialists, the Senate and House of Representatives of
6 the State of Washington, in legislative session assembled, respectfully
7 represent and petition as follows:

8 WHEREAS, The United States Congress has in this new session
9 entertained, debated, and passed legislation that would prohibit
10 federal mandates upon states without the coincident provision of the
11 means necessary to implement the mandates; and

12 WHEREAS, The United States government negotiated a number of
13 treaties, known as "the Stevens Treaties," with several different
14 Indian tribes in Washington Territory in the mid-1850's; and

15 WHEREAS, In these treaties, the United States government secured to
16 these Indian tribes "the right of taking fish, at all usual and
17 accustomed grounds and stations"; and

18 WHEREAS, These federal treaties became binding on, indeed, became
19 a federal mandate on, the State of Washington upon its entry into
20 statehood; and

1 WHEREAS, Interpretations in federal court decisions of this treaty
2 language regarding the right of taking fish, most notably in a 1974
3 decision by federal district Judge Boldt, have resulted in fishing
4 privileges for tribal members in areas well beyond the boundaries of
5 tribally owned lands; and

6 WHEREAS, In December 1994 federal district court Judge Rafeedie
7 interpreted this same portion of the treaties to include a tribal right
8 to harvest shellfish on ancestral tribal fishing areas, including on
9 what are now privately owned lands; and

10 WHEREAS, This federal treaty provision, a mandate imposed on the
11 state of Washington by the federal government, has already cost the
12 state and numerous other parties millions of dollars in litigation
13 costs. This most recent decision is having a significant negative
14 impact on the state's economy, particularly on private citizens who
15 depend on shellfish harvesting for their livelihood, threatens to erode
16 private property rights to tidelands and other privately held natural
17 resources, and may deprive many Washington citizens of the opportunity
18 for recreational shellfish harvesting;

19 NOW, THEREFORE, Your Memorialists respectfully implore the United
20 States government to do the following:

21 (1) Be part of the solution to the conflicts caused by this federal
22 treaty by offering federally owned tidelands for tribal shellfish
23 harvest as part of any implementation plan, for example, offering
24 tidelands on Indian Island and at the Bangor Naval Base;

25 (2) Assist the state of Washington with funds to help offset the
26 costs of the state's appeal of the shellfish decision; and

27 (3) In the event that the state's appeal is unsuccessful, provide
28 funding for the administrative costs of development and implementation
29 of a dual shellfish management program, for compensation to the state's
30 commercial shellfish industry, for compensation for private property
31 owners for this federal taking of their property, for the purchase of
32 tidelands for tribal and public recreational shellfish harvesting, and
33 for any other costs associated with implementing a final order of the
34 court in the shellfish subproceeding.

35 BE IT RESOLVED, That copies of this Memorial be immediately
36 transmitted to the Honorable Bill Clinton, President of the United
37 States, the President of the United States Senate, the Speaker of the

1 House of Representatives, and each member of Congress from the State of
2 Washington.

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